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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No. 1125

STANDARD OIL COMPANY OF CALIFORNIA
(a corporation),

Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of
the State of California,

Appellee.

**MOTION OF APPELLEE
TO ADVANCE CAUSE UPON CALENDAR.**

EARL WARREN,
Attorney General of the State of California,

H. H. LINNEY,
Assistant Attorney General of the State of California,

ADRIAN A. KRAGEN,
Deputy Attorney General of the State of California,
State Building, San Francisco, California,

Counsel for Appellee.

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STANDARD OIL COMPANY OF CALIFORNIA
(a corporation),

Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of
the State of California,

Appellee.

MOTION OF APPELLEE TO ADVANCE CAUSE UPON CALENDAR.

Comes now the Appellee in the above-entitled cause and moves that this case be advanced for early hearing, and in support of his motion makes the following brief statement of the matter involved and the reasons relied upon for the advancement:

Appellant brought this action in the Superior Court of the State of California to recover gasoline taxes levied under the California Motor Vehicle Fuel License Tax Act in respect of sales of gasoline to United States Army post exchanges located in California on government reservations not under the exclusive jurisdiction

of the Federal Government. Both the Superior Court of the State of California and the Supreme Court of the State of California have held that the tax was properly levied for the reason that the post exchanges were not instrumentalities of the Federal Government.

The reasons relied upon for advancement are that the matter is one of extreme importance to the post exchanges, gasoline distributors, and to the taxing authorities of California and other states of the Union. With the present expansion in number and size of the post exchanges throughout the country, the amount of their purchases both of gasoline and of all types of commodities has increased tremendously. The post exchanges have taken the position that they are instrumentalities of the Federal Government based on the holding of the United States Circuit Court of Appeals for the Fourth Circuit in *Query v. United States*, 121 Fed. (2d) 631, cert. den. U. S. , 62 Sup. Ct. 295; and that a purchase by them is therefore not subject to the imposition of the California motor vehicle fuel license tax. The taxing officials of the State of California on the other hand are bound to follow the decision of the Supreme Court of California in the instant case. In order properly to protect the finances of the post exchange, to enable distributors to be reimbursed for the amount expended for taxes, and to enable the State of California to conduct an orderly administration of its taxing system, it is essential that the problem be determined at the earliest possible date.

A solution of this problem will also determine other taxing problems incident to the operation of post exchanges, especially those which arise by reason of the

language of the so-called "Buck Act" (Public No. 819, 76th Congress), specifically excluding from its provisions sales by instrumentalities of the Federal Government. We understand that some post exchanges making such sales are collecting sales tax and impounding the money but that others are making no collection at all. If this cause is determined at an early date the problem incident to the handling of such transactions will be materially lessened and the difficulty of adjustments between the post exchanges and the State taxing authorities will be made possible of equitable solution.

Wherefore, Appellee prays that the case be advanced upon the calendar and assigned for hearing at an early date.

Dated, San Francisco, California,

April 8, 1942.

Respectfully submitted,

EARL WARREN,

Attorney General of the State of California,

H. H. LINNEY,

Assistant Attorney General of the State of California,

ADRIAN A. KRAGEN,

Deputy Attorney General of the State of California,

Counsel for Appellee.

Appellant concurs in the above motion and waives all notice thereof.

Dated, San Francisco, California,

April 8, 1942.

Felix T. Smith

Francis R. Kirkham

Sigvald Nielson

Counsel for Appellant